

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

|                           |   |             |
|---------------------------|---|-------------|
| Luke Allen,               | ) |             |
|                           | ) |             |
| Petitioner,               | ) |             |
|                           | ) | 1:06CV627   |
| v.                        | ) | 1:99CR277-1 |
|                           | ) |             |
| United States of America, | ) |             |
|                           | ) |             |
| Respondent.               | ) |             |

**RECOMMENDATION  
OF MAGISTRATE JUDGE ELIASON**

Petitioner, a federal prisoner, has submitted a paper-writing in which he seeks resentencing based on alleged Constitutional and other violations. This submission must therefore be construed as a motion to vacate sentence under 28 U.S.C. § 2255. See Gonzalez v. Crosby, \_\_\_ U.S. \_\_\_, 125 S.Ct. 2641, 162 L.Ed.2d 480 (2005); United States v. Winestock, 340 F.3d 200 (4th Cir. 2003) (Rule 60(b) motion). As such, petitioner's pleading is defective because he has failed to file his claims on the proper Section 2255 forms. See Rules Governing Section 2255 Proceedings Rule 2(b).

There is no need to put petitioner through the extra work of submitting his claims on the proper forms, however, because Court records reveal that petitioner has already challenged this conviction in a previous Section 2255 action. [No. 1:01CV301] Therefore, the present pleading should be dismissed for lack of jurisdiction because of petitioner's failure to obtain permission from the Fourth Circuit for a second or successive Section 2255 action, as is required by 28 U.S.C. § 2244 and 28 U.S.C. § 2255. See Winestock, 340 F.3d at 200. The Court notes that the Fourth Circuit has twice denied petitioner permission to file a second section 2255 motion. (Docket nos. 64, 67) The Clerk will therefore not send him more forms, but he may request them from the Clerk if he wishes to seek permission for a third time.

**IT IS THEREFORE RECOMMENDED** that petitioner's submission be construed as an attempt by petitioner to file a second or successive Section 2255 action.

**IT IS FURTHER RECOMMENDED** that this action be dismissed due to petitioner's failure to obtain certification from the Fourth Circuit as required by 28 U.S.C. §§ 2244 and 2255 and Fourth Circuit Local Rule 22(d).

  
United States Magistrate Judge

July 20, 2006